

2005
STATE OF THE JUDICIARY ADDRESS



The Honorable Charles E. Jones
Chief Justice of Arizona

February 21, 2005

AN ADDRESS
ON THE STATE OF THE ARIZONA JUDICIARY

*Presented during the First Regular Session of the 47th Arizona
Legislature to a Joint Session of the Arizona Senate & House of
Representatives*

Delivered by Arizona Supreme Court
Chief Justice Charles E. Jones
Monday, February 21, 2005

Mr. Speaker, Mr. President,
distinguished members of the 47th
Legislature, ladies and gentlemen:

Good morning. On behalf of the
Arizona Judiciary, I thank you for the
opportunity to appear in joint session.
This annual report is for each of you, the
elected lawmakers whom the people
have chosen to establish by law the
public policy of the State of Arizona.

I acknowledge also my esteemed
colleagues at the Arizona Supreme Court
– Vice Chief Justice Ruth McGregor and
Justices Rebecca Berch, Michael Ryan,
and Andrew Hurwitz. Justice McGregor
is absent today, due to a prior court-
related commitment. As you are aware,
she is the Chief Justice elect, scheduled
to take office June 12th of this year.
Justice Berch will assume the duties of
Vice Chief Justice at the same time.

It continues to be a distinct honor
and privilege to work with these highly
qualified judicial officers as members of
the Supreme Court. The same is true
with respect to judges, court personnel,

and administrative staff at all courts
throughout the State.

The structure of American
government, established more than two
centuries ago, differs from that of all
other nations in that it features three
distinct branches, each required to
function independently of the others.
Each is defined as co-equal with the
others; yet notwithstanding the important
principle of judicial independence, the
branches are, in certain ways,
accountable to one another and in a real
sense, there is an interdependence
among the three that requires a close
working relationship and a cooperative
mindset that can lead only to good
government in every respect. For
example, the courts are dependent on the
legislature for budget, whereas the
courts' obligation and duty is to see that
legislative and executive actions are
consistent with both the state and federal
constitutions. That is how the system
was intended to work, and one method
by which judicial accountability is
achieved is by the very invitation that
the Chief Justice appear before you

today to report on the status of the judicial branch. I am grateful to all for the opportunity, and welcome the assignment.

As you know, it is about the people's business that we labor. The people of Arizona, your constituents, resort to the courts in great numbers for the resolution of disputes and for the redress of grievances. Some claims have merit, and others do not. In this last fiscal year, the courts of Arizona addressed roughly two and one-half million case filings, an average of ten thousand cases every working day. Six hundred more judicial matters will come through the doors of our courts during the few minutes that I speak to you.

Last year, case volume increased in the criminal docket 5.4 percent over the previous year. The domestic relations calendar rose 11.2 percent during the same period. DUI cases increased 2.9% to a record of 88,207 filings.

PEOPLE FROM ALL WALKS OF LIFE FIND THEIR WAY TO THE COURTROOM. Let me turn to a description of the people who use our courts every day. They come generally in a state of anxiety and sometimes fearful of the experience. For the most part, they prefer not to be there. They are in the courts because they have been charged with a crime, or have filed claims to resolve a dispute or to right a wrong. Some disputes are large and complex, at times involving both private as well as public institutions. An independent judiciary is an absolute necessity in every nation that desires freedom, for it provides the most reliable and predictable mechanism by which

civil society relieves the stress and strain of life among its citizens.

We are a nation founded on the "rule of law." The nation's courts and judges are sworn to uphold the constitution as the fundamental expression of the people. We are also sworn to apply statutes as enacted by the people's representatives. When people come to the courts, they come in search of fairness, expecting justice. Rich or poor, powerful or weak, the nation's founders promised equal justice under law. Our objective, in the end, is to do as one of the nation's great jurists of the past once stated: to pursue "traditional notions of fair play and substantial justice."

CHILDREN COME TO THE COURTS. Far too often children come because they have been neglected or abused. Since the time the Legislature modified the state's public policy which favors the protection of neglected children -- a worthy goal -- we have seen children in our courtrooms in ever increasing numbers.

Children appear before the Courts from families in turmoil often after a dark journey of emotional pain and personal suffering. The Supreme Court, acting pursuant to statute enacted in the recent special session, has implemented new procedures for dependency proceedings, including jury trials for termination of parental rights cases. These changes in policy have resulted in a virtual explosion of dependency cases which now strain the ability and resources of our juvenile courts and Foster Care Review Boards across the State. Last year alone 3,881

child dependency cases were filed, an increase of 20.2%.

IN ADDITION TO THE CHILDREN, WHOLE FAMILIES come to court in increasing numbers and often in tumultuous circumstances. More than 50,000 domestic relations cases were filed last year and, almost unbelievably, we received nearly that same number of requests for Court Orders of Protection, usually from a desperate spouse. The plea for help from within our communities is long and deep. On a personal level, my most fervent wish would be that our families remain intact. More stable families will cure many of the problems facing society today.

Permit me then to borrow a phrase uttered by one of America's great religious leaders some thirty-five years ago when he said: "No other success can compensate for failure in the home." I am aware that many of you have heard that statement and give it your full endorsement. Unfortunately, however, when families come to court, the failure, often, has already occurred. Families in crisis need swift resolution of their financial issues, their property issues, and their child custody issues in order to stabilize what is left of their lives. And, although many worthwhile programs have been established over recent years, the family court system, particularly in Maricopa County, has become overly complex and somewhat fragmented. Delays have been long and the process has been confusing.

Eighty-three percent of family law cases in Arizona currently involve parties who lack the assistance of legal counsel. This causes an immediate impact on the ability of courts to manage

and move cases through the system. In response to this huge problem, the Supreme Court has recently completed a study and issued policy directions proposing a complete re-engineering and standardization of the entire domestic relations case-processing procedure in Maricopa County.

Under the leadership of Maricopa County Presiding Judge Colin Campbell and Family Court Presiding Judge Norman Davis, the court is now implementing comprehensive procedures to resolve these problems, and in March, the Arizona Judicial Council will complete its work on a detailed set of new family court rules which the Supreme Court will then formalize later this year. Moreover, new Arizona child support guidelines went into place last month along with additional online tools to assist individuals going through the process. I am both pleased and optimistic about our prospect for success in this program.

OTHERS SEEN FREQUENTLY IN THE COURTS ARE PEOPLE CHARGED WITH CRIMINAL behavior, many of whom are addicted to drugs and alcohol. This session, the Judiciary is again requesting help to expand our Drug Court program in order to increase the number of defendants able to receive help in the form of treatment and counseling.

These "problem solving" courts, as we call them, are achieving enormous success in virtually every part of the United States. They have been equally successful where used in Arizona. Yuma County for example, under Presiding Judge Tom Cole's direction, has developed a highly successful

program. Representative Bill Konopnicki from District 5 has introduced House Bill 2088 to highlight discussion of this ongoing process which offers both consequences for misbehavior and hope for the future in the lives of those who complete the drug court curriculum.

MANY COME TO OUR COURTS TO BE PLACED ON PROBATION, BOTH JUVENILE AND ADULT. Currently, over 66,000 adult felons and 9,000 juveniles are on supervised probation on our streets. Notwithstanding the number, we can report at this time that our probation programs are functioning well and that Arizona has what is considered one of the outstanding probation systems in the nation. It continues to be a system in need of significant resources, however, and as you know, the alternative – incarceration – is roughly three thousand percent more expensive.

OUR COURTS ALSO SEE VULNERABLE SENIOR CITIZENS IN INCREASING NUMBERS. These are people who have reached the elderly stage of life. The courts depend on public and private fiduciaries to oversee the properties and assets of these citizens. Unfortunately, and in some cases tragically, there have been fiduciaries in our State who have taken advantage of elderly persons unable to protect themselves by exploiting their financial wherewithal.

Statewide, fiduciary defalcations have become a disgrace with over \$20 million in proven aggregate losses to date. And the problem is not confined to Arizona. The AARP documented this as a national problem and has designated it

as one of five national legislative priorities this year. It is part of a larger and deeply disturbing trend across the nation.

In Arizona, once again, we have taken the lead in an effort to bring this problem under control. At our urging, you enacted laws in a recent session by which fiduciaries must be certified, complaints must be investigated, and violations must be prosecuted. We are making full use of that authority through our Administrative Office but will need your help. Currently we cannot keep up with the volume of meritorious complaints against fiduciaries and the necessary investigations that must follow. Representatives Nelson and Kirkpatrick have agreed to bring this issue to your attention this session. As our population continues to age, the need for added protection of our senior citizens will necessarily become more critical.

PEOPLE COME TO THE COURTS IN GREAT NUMBERS, BUT THEY COME IN THE GREATEST NUMBERS TO OUR COURTS OF LIMITED JURISDICTION. These are the local Justice of the Peace and Municipal Courts. Many are unaware that the limited jurisdiction courts statewide actually address ninety-two percent of all cases filed.

Though it is true this caseload is substantially less complex than in the superior court, cases must nevertheless be resolved. Many involve traffic citations, but some also involve more serious issues, including DUI. These are the judges and court personnel who serve on the judiciary's front lines, providing first-contact service to people

who come to the courts. The combined challenge of meeting this work load and retaining court staff and necessary infrastructure requires monumental effort.

Let me give you a snapshot of things we have done. Within our limited jurisdiction courts over the past three years we have taken steps greatly to improve our education and training program for judges. We want to ensure that each judge -- law trained or not -- is given the education and the tools essential to do this important judicial work. In these courts, we strive for consistency and equality in the application of the law, a worthy goal, but one that is not yet achieved.

During this renewed focus on education and training, some have suggested -- erroneously I might add -- that the Chief Justice had undertaken a campaign to eliminate non-law trained judges by adopting a new and expanded education and testing program. Of course, it was never our intent to eliminate non-law trained judges.

However, I can report to you that we have now completed three full training cycles under the new and much expanded curriculum. Every newly appointed or elected judge has taken the examinations successfully. Some needed extra help and additional training, but all have passed the tests.

The Court's new judicial training program has been well received and has garnered enthusiastic reviews by participating judges. Clearly, those Limited Jurisdiction Courts that have had the benefit of these new training

programs function better today than they did three, four, and five years ago.

ON ANOTHER FRONT, PEOPLE OFTEN LEAVE OUR COURTS FACING A COURT-ORDERED FINE, A FEE, OR AN ORDER OF RESTITUTION FOR CRIMINAL DAMAGE. This constitutes debt owed to the State. If these Orders are to have meaning, they must be enforced. Please be advised that we are doing what we can to enforce them.

I can now report that while our aggregate caseload has increased only three percent over the past five years, our revenues have increased over forty percent. During this past year alone we increased collections in the courts by an additional \$22.4 million.

The quest to improve court collections began in 1989 when statewide court collections were at \$70 million per year. The commitment was made to the Legislature to increase revenues to \$100 million per year within five years. We achieved that goal in just three years. And, since 1989, the courts have collected an aggregate of more than \$1.3 billion in excess of the 1989 benchmark of \$70 million per year.

This has been an effort to help state and local government. It has come to be called the FARE program for "Fines, Fees and Restitution Enforcement."

The monies collected do not remain with the courts, but are passed to the State, to our fifteen counties, and to our ninety-three cities and towns. This increased success of collecting unpaid

debt owed to Arizona government has clearly played an important role these past two years in alleviating the effects of the statewide revenue shortfall. The implementation of these collection programs also includes the online payment of fines and the interception and withholding from state income tax refunds, monies otherwise owed the State. This, too, has been successful.

ON ANOTHER TOPIC, PEOPLE CAN NOW ACCESS OUR COURTS IN LARGE NUMBERS – without being physically present. The critical role of court technology and related communications in providing access to court information cannot be overstated. This is especially true in a State as large as Arizona with great geographical distances between our communities.

We now have case information online in over 137 Courts, some ten million cases and six hundred forty million records. We have digitized millions of documents. We are distributing minute orders electronically in ever increasing numbers. We are pleased at the amount of automation the judiciary has been able to establish over recent years. This huge investment has helped make manageable what would otherwise be unmanageable. But Arizona's courts and the people who use them daily will continue to depend on funding by the legislature for the adequacy of automation resources, both existing resources and those systems in the planning stage.

With more than twenty-five million inquiries logged by computer users this past year, the court's Web site provided valuable information to nearly

one-half million customers. Our online Child Support Calculator, for example, received 6.8 million hits last year, and people were able successfully to perform 4.8 million child support calculations in the same year.

We have also achieved automated status for court Orders of Protection. When a court takes the time to hear and grant an Order of Protection to a petitioner pleading for safety, it will serve no value if the Order itself is not available on scene when local police respond to a desperate call for help. By automation, much of this problem has now been resolved.

Also, our Juvenile case management system has been made available to all law enforcement agencies and has been linked to the Juvenile Department of Corrections. Our Court Clerks now send child support orders directly into the DES central clearinghouse for processing.

On a related front, the "Law for Kids" web site created and placed online by the Arizona Foundation for Legal Services and Education is a dramatic success story of automated public service with 87 million computer inquiries from three million visitors over the last four years. This award-winning interactive web site, now replicated in other states, is but one example by which useful service is provided on-line.

We have also traveled the long and difficult road developing electronic case management systems that serve our courts statewide. But the systems now suffer the infirmities of age and are challenged by continuous demands from the public for more and better service.

We struggle to keep our systems together and to find a way to upgrade all of them in the face of current technological advancement.

WE ALSO SEE PEOPLE IN ARIZONA'S COURTS WITH SERIOUS DOCUMENTATION PROBLEMS. Many come without legal representation, expecting an easy resolution of sometimes complex situations. They often come with documents prepared by commercial document preparers, some of whom are selling flawed and ineffectual court documents to unsuspecting citizens. This has become a serious problem as it results in substantial fraud on the public, causing severe monetary loss because formal legal documents are being prepared by unqualified persons.

We have in part solved the problem with a recently established formal certification program for commercial document preparers requiring that standards be met. Many document preparers are qualified and are now certified, but some are not. At present, the problem is far from settled.

IN COURT, WE ALSO SEE PEOPLE WITH A COMPLAINT AGAINST AN ATTORNEY. In Arizona, we have an outstanding state bar organization. Without reservation, I state that I am proud to have served as a licensed, active member of the legal profession for almost 43 years. In 2002, the Supreme Court adopted revised ethical rules to govern the practice of law. In doing so, we made an important change in direction. In the past, the rules required attorneys to be "zealous" advocates for their clients. Regrettably, some took that to the extreme. The new

rules require attorneys to represent their clients – not zealously, but "honorably."

Not long ago, complaints against bar members were delayed two to three years before resolution. That was unacceptable. Accordingly, we have now set in place new and more efficient procedures such that today some ninety percent of all bar complaints are addressed and resolved within six months, and the remainder, normally the more complex cases, are resolved within twenty-two months.

IN CONCLUSION, this will be my last opportunity as Chief Justice to address the Legislature in a State of the Judiciary Address. As the constitution requires, I will retire from the Court this June by reason of age. But from the perspective of one who has witnessed several decades of dramatic change in our state both in the private and public sectors, let me leave you perhaps with a better understanding and appreciation of the pride and the good fortune each of us should feel about the Arizona judiciary.

Today, Arizona has one of the highest ranked and respected court systems in the United States. It has been listed in the category of the "best" by the United States Chamber of Commerce, the business community's key indicator that addresses a state's ability to attract new business. It was not always this way. As one who practiced law under the old system, prior to 1974, I believe the superior quality of Arizona's judicial branch and its high degree of national recognition are directly attributable to the merit selection system by which urban trial judges and appellate judges and justices have been appointed to office.

The Arizona judiciary's reputation for integrity, innovation, and commitment to public service is recognized by colleagues in state court systems across the entire nation. It is appropriate indeed that we note that two members of the Arizona bar continue to give distinguished service to the entire nation as members of the Supreme Court of the United States. In addition, members of the current Arizona Supreme Court have been recognized and serve on a variety of Committees and Commissions at the national level.

As we witness the turmoil of nations embroiled in armed conflict and social upheaval, as we ponder large populations impacted by catastrophic natural disasters, we are reminded that life in the United States, even with its problems, has provided and continues to provide good fortune for so many. With a bounty of plenty and the blessings of individual liberty, our nation continues to pursue its founding commitment to self-determination, human values, and the rights of the individual.

An independent judiciary is absolutely essential if the rule of law is to be maintained. I am aware that some of you have expressed unhappiness over a number of court decisions. I suggest, however, that by reason of our constitutional structure, tension between the branches has been with us in varying degree since the beginning of the Republic. It will probably continue as long as we remain a free and independent people. I simply express the hope that tension not become a destructive force.

America has created the great model. Three branches working independently, but hopefully, with a proper measure of mutual cooperation. ***WE SHOULD SURELY PROMOTE THE STRENGTHENING OF FREE INSTITUTIONS EVERYWHERE — BUT WE MUST REMAIN PROUD OF WHAT WE HAVE IN ARIZONA.***

I know that each of you feels privileged to serve in the elected political office you hold, just as I and my colleagues are privileged to serve as judicial officers. As elected representatives, the people have placed confidence in all of you, as do I.